

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 32**

Oakland, California

CINTAS CORPORATION, NO. 3
Employer

and

Case 32-RC-5750

INTERNATIONAL BROTHERHOOD OF
TEAMSTERS, LOCAL 2785
Petitioner

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held on March 31, 2010, before a hearing officer of the National Labor Relations Board, herein referred to as the Board, to determine whether the petitioned-for bargaining unit consisting of all drivers and warehouse employees is appropriate and whether the new account coordinator should be included in the petitioned-for bargaining unit.¹ No other issues were raised in this matter.

¹ Upon review of the entire record in this proceeding, the undersigned finds:

- a. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.
- b. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein. Commerce facts: Cintas Corporation, No. 3, is a Nevada Corporation engaged in the business of providing corporate identity uniforms and laundry services from its office and facility located at 220 Demeter Drive, East Palo Alto, California. During the past year, a representative period, the Employer in the course and conduct of its business operations purchased and received goods valued in excess of \$50,000 directly from sources located outside the State of California.
- c. The labor organization involved claims to represent certain employees of the Employer.
- d. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

I. DECISION

For the reasons detailed herein, I conclude that the following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining with in the meaning of Section 9(b) of the Act:

All full-time and regular part-time drivers, including service sales representatives, shuttle drivers, route skippers and sanis drivers, and warehouse employees, and new account coordinators employed by Cintas Corporation, No. 3, at its facility located at 220 Demeter Drive, East Palo Alto, California, but EXCLUDING all office clerical employees, supervisors as defined in the Act, and all other employees.

II. ISSUE

The Petitioner seeks a bargaining unit of all drivers and warehouse employees currently employed by the Employer at its East Palo Alto facility. The Employer argues that drivers are a separate appropriate unit and the warehouse employees should be excluded from the unit because the warehouse employees have a sufficiently distinct and separate community of interest from the drivers. The Petitioner and the Employer agree that if the Region determines an appropriate unit includes the warehouse employees, the unit should also include the new account coordinator. The Petitioner is willing to proceed to an election in any unit found appropriate by the Region.

III. OVERVIEW OF OPERATIONS

The Employer is a Nevada corporation engaged in the business of providing corporate identity uniforms, industrial products, cleaning products, and cleaning and laundry services to customers nationwide. The only facility involved here is a branch office located at 220 Demeter Drive, East Palo Alto, California. This facility services customers in an area spanning from Palo Alto, California, to Foster City, California, and

including the city of Half Moon Bay. The Employer's customers include a wide variety of businesses, ranging from offices, restaurants and medical facilities to industrial plants.

The Employer currently employs nine drivers, two warehouse employees, and one new account coordinator at this facility. The nine drivers include six service sales representatives (SSR), one shuttle driver, one route skipper (a relief driver) and one sanit driver.

The facility operates under the direction of Branch Manager Chris Hack. Mark Lectura is the Service Training Coordinator. At the hearing, the parties stipulated that Hack and Lectura each possess and exercise one of the following authorities: hire, transfer, suspend, layoff, recall, promote, discharge, assign, reward, or discipline other employees, or have the responsibility to direct them, or to adjust their grievances or to effectively recommend such action, utilizing independent judgment in exercising such authority. Accordingly, I find that the above-named individuals are supervisors as defined in Section 2(11) of the Act and are excluded from the appropriate unit.

A human resources manager visits the facility periodically but is based out of a different location and services several branches.

The Employer's facility consists of a single warehouse that adjoins a general office area. The warehouse has two loading docks, one bay door, storage areas for cleaning and miscellaneous products and a pre-staging area where product is organized for loading onto the SSR vans. The general office area contains individual offices for Hack, Lectura and the new account coordinator. There is a route room used primarily by the drivers to review and complete the paperwork associated with their routes. A break room used by all of the employees and managers is also in the office area.

The Employer's operation basically works as follows: The shuttle driver uses a tractor/trailer rig to pick up clean uniforms and industrial products from the Employer's facility in Stockton, California, and delivers those products back to the facility warehouse. After the shuttle driver delivers new or clean product to the facility, the product is unloaded directly from the shuttle into the warehouse by the warehouse employees and organized in the pre-stage area based on the "load sheets" which are sent to the facility from Stockton on the shuttle truck. The warehouse employees then load product onto the delivery vans driven by the SSR drivers. After the warehouse employees have finished loading product onto the drivers' vans, the warehouse employees place the load sheets in bins inside the delivery vans. Before the regular route drivers begin their routes each morning, the drivers prepare customer invoices and review the load sheets placed in their vans by the warehouse employees to verify that their vans contain the appropriate product for each customer. When discrepancies occur the SSR driver either seeks out a warehouse employee to correct the problem or handles it himself, which often includes checking the "late line" for uniforms that were delayed in arriving at the warehouse.

The SSR drivers deliver clean product to and retrieve dirty product from customers, collect payment from or grant credit to customers, and interact with customers to ensure they are satisfied with the product, to address problems, and to sell them additional product and/or services.

The route skipper serves as a relief driver, filling in for SSR drivers when they are absent. The sanitization driver does not deliver any product but rather provides facility cleaning services to customers.

The new account coordinator prepares the paperwork for new accounts as they are acquired and performs general administrative duties for the branch manager.

IV. ANALYSIS

The Board, in *Overnite Transportation Company*, 331 NLRB 662 (2000) at page 663, stated that in determining an appropriate unit under Section 9(b), the Board first decides whether the petitioned-for unit is appropriate. Similarly, in *Overnite Transportation Company*, 322 NLRB 723 (1996), the Board stated the “Board’s declared policy is to consider only whether the unit requested is an appropriate one, even though it may not be the optimum or most appropriate unit for collective bargaining”. If the petitioned-for unit is appropriate, the inquiry into the appropriate unit ends. However, in the event that the petitioned-for unit is not appropriate, the Board then examines alternative units suggested by the parties and the Board also has discretion to select an appropriate unit that is different from the alternative proposals of the parties. In general, the Board attempts to select a unit that is the smallest appropriate unit encompassing the petitioned-for employee classifications.

Herein, the Petitioner seeks to represent a bargaining unit comprised of all 12 non-supervisory employees employed at the Employer’s East Palo Alto facility. As stated in *Marks Oxygen Co.*, 147 NLRB 228 (1964), the Board’s policies regarding the unit placement of drivers, including the policy announced in *E.H. Koester Bakery Co.*, 136 NLRB 1006 (1962), did not reverse basic policies regarding unit determinations including the policy that a plantwide unit is presumptively appropriate; that a petitioner’s desires as to the unit is always a relevant consideration, and that it is not essential that a unit be the most appropriate unit.

In determining whether employees share a sufficient community of interest that is appropriate to include in a single bargaining unit, the Board examines the following factors: (1)

functional integration; (2) frequency of contact with other employees; (3) interchange with other employees; (4) degree of skill and common functions; (5) commonality of wages, hours and other working conditions; and (6) shared supervision. See *Publix Super Markets, Inc.*, 343 NLRB 1023, 1024 (2004).

I find that, based on an application of the facts in this case to the factors enumerated above, that the Employer's drivers, warehouse employees, and new account coordinator employed at the Employer's East Palo Alto facility share a sufficient community of interest that is appropriate to include in a single bargaining unit. The drivers, warehouse employees, and new account coordinator all work from a common facility and constitute all of the Employer's employees working at the Employer's East Palo Alto facility. The drivers and warehouse employees' jobs are highly functionally integrated with one another and together all employees at the facility work to service the Employer's customers in their assigned service area. Because of the fact that they work at a common facility and their work is functionally integrated, the drivers and warehouse employees are in regular contact with each other, even though the drivers' work time is largely spent outside of the facility. As noted by the Petitioner, drivers and warehouse employees deal with the same product line, although in various stages of preparation, storage, packaging, and delivery of the product. The drivers and warehouse employees routinely work together and alongside one another in carrying out their tasks.

The Employer argues that drivers and warehouse employees should not be included in one unit where drivers are responsible for sales and customer service, as here, and cites *Dr. Pepper Bottling Co.*, 228 NLRB 1119 (1977) in support of this argument. However, the facts of that case are clearly distinguishable. In *Dr. Pepper Bottling Co.*, there were a much larger number of employees involved than the fourteen in this case, and there were two completely separate divisions of drivers

with very different duties. There were “transport drivers,” who worked with production employees in the shipping and receiving department and who were responsible solely for delivery of the employer’s product, and there were “driver-salesmen,” who worked in the sales department and who focused solely on securing sales. The union sought only a unit of driver-salesmen and sought to exclude the transport drivers along with all other production and maintenance employees. The Board agreed with the union, finding that the driver-salesmen drove their vehicles only “as an incident of” their sales activity. In this case the drivers both sell and deliver the product, and they do not work in a separate sales division but rather with and amongst the warehouse employees.

In addition to being functionally integrated and in frequent contact with one another, drivers and warehouse employees have some overlapping duties. The warehouse employees drive the drivers’ vans, and the drivers load and unload product. This is distinguishable from the facts in *Overnite Transportation Co.*, 331 NLRB 662 (2000), which the Employer relies on in support of its argument. In *Overnite*, the warehouse employees had no overlapping duties and no interchange with the drivers. The drivers routinely retrieve product from the warehouse and load it onto their vans themselves. For instance, if a driver inspects the product on his van, reviews the load sheet, and discovers his load is missing an item, he will search the warehouse, locate the item, and then stock his van appropriately himself. Also, if a garment or other product arrives at the facility separately from the rest of a load it is placed on a rack in the warehouse that is known as the “late line.” Drivers, not warehouse employees, are responsible for checking the late line for their customers’ garments and loading these items themselves. The Employer also uses a trolley system in the warehouse to organize and “pre-stage” garments. It is the shuttle driver, not a warehouse employee, who loads garments onto the trolley system, and the warehouse employees who unload them from the trolley onto the vans. These facts clearly distinguish this case from another case cited by the

Employer, *Cal-Maine Farms, Inc.*, 249 NLRB 944 (1980), in which it was unusual for drivers to load/unload their trucks.

Conversely, the warehouse employees drive the drivers' vans as they move them in and out of the loading docks and around the parking lot. The Employer notes that the "jockey" warehouse employees in *Overnite* routinely moved drivers' trucks around the facility and that the Board still excluded them from the unit. However, in *Overnite* there were a total of 22 "jockeys" and only 3 were qualified to drive. In this case, there are only two warehouse employees, and both of them drive the drivers' vans.

The record also establishes that warehouse employees and drivers share similar degrees of skill. Although most warehouse employees and drivers receive different training, the job qualifications are the same for hire into either position, and all employees receive the same orientation. Whether hiring a driver or a warehouse employee, the Employer requires only that he or she have a driver's license, with the exception of a shuttle driver, who must have a commercial driver's license. While the Employer considers sales or customer relations experience an asset for driver applicants, it also considers "people skills" an asset for warehouse employee applicants. The Employer stated that it encourages its warehouse employees to seek advancement to driver positions, and has promoted one warehouse employee to a driver position in the last seven years. Although drivers and warehouse employees receive different training, the shuttle driver does not receive the same training as the other drivers, and he receives the same electric pallet jack training as the warehouse employees.

Drivers and warehouse employees share common benefits, including health insurance and retirement benefits, and holidays. They punch the same time clock and share a break room and are all subject to the same attendance and disciplinary policies. They are all eligible for overtime.

Although warehouse employees work five days a week and most drivers work four days a week, the shuttle driver and route skipper work five days a week like the warehouse employees. While drivers work earlier hours than warehouse employees, all employees generally work the same number of hours a day. Drivers work from 5:30 or 6:30 a.m. to 2:00 or 3:00 p.m. Warehouse employees work from approximately 12:00 p.m. to 8:30 p.m.

Although drivers and warehouse employees are generally compensated differently, they share some similarities in pay. Drivers are paid a base weekly salary in addition to commissions, and warehouse employees receive an hourly wage rate. The shuttle driver is paid an hourly wage rate like the warehouse employees. While the majority of drivers' compensation comes from commission on sales, there is not a vast difference between a new warehouse employee's wages and a new driver's base pay. A new driver starts at a base salary of \$430 a week. The Employer's two warehouse employees are currently paid \$15.50 and \$12.10 an hour, or \$620 and \$484 per week, respectively. Thus, the latter warehouse employee's monthly pay is only \$54 less than a new driver's monthly base pay.

Drivers and warehouse employees also share some common supervision. Warehouse employees generally report to Branch Manager Hack, and drivers generally report to Service Training Coordinator Lectura. However, the shuttle driver reports directly to Hack like the warehouse employees. Hack directly supervises the regular route drivers when Lectura is away from the facility. On the occasions when Hack fills in for Lectura, Hack reviews the drivers' invoices with them and grants drivers' leave requests. Moreover, Hack performs job performance reviews for all drivers and warehouse employees alike. Both groups are eligible for pay increases based solely on Hack's recommendation.

Based upon the record evidence, I conclude that the drivers and warehouse employees share a sufficient community of interest that is appropriate to include them in a single bargaining unit based on their employment location at a common facility, the functional integration of their work, frequent contact and interchange, similar degree of skill and common function, commonality of benefits, hours and other working conditions, and overlap of supervision.

Both the Employer and the Petitioner agree that, if the petitioned for bargaining unit of drivers and warehouse employees is found appropriate, the new account coordinator is appropriately included in the bargaining unit. Inasmuch as the record reflects that the new account supervisor performs data entry work regarding new customer accounts established by the drivers and that the new account coordinator shares a community of interest with other unit employees, I find that it is appropriate to include the new account coordinator in the petitioned for bargaining unit.

V. CONCLUSION

The evidence establishes that the petitioned for bargaining unit of drivers, warehouse employees, and new account coordinator share a sufficient community of interest to constitute an appropriate unit. Moreover, the petitioned for bargaining unit constitutes a presumptively appropriate facility wide unit. *Marks Oxygen Co.*, 147 NLRB 228 (1964). Inasmuch as the petitioned-for bargaining unit is appropriate, pursuant to the Board's policies stated in *Overnite Transportation Company*, 331 NLRB 662 (2000) and in *Overnite Transportation Company*, 322 NLRB 723 (1996), I will order an election in the petitioned-for bargaining unit as described in the unit description contained herein.

VI. DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the undersigned, among the employees in the unit found appropriate at the time and place set forth in the notice of election to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the unit who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Employees engaged in any economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, in an economic strike which commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements, are eligible to vote. Those in the military services of the United States who are employed in the unit may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by the International Brotherhood of Teamsters, Local 2785.

VII. ELECTION NOTICES

Please be advised that the Board has adopted a rule requiring that election notices be posted by the Employer at least three working days prior to an election. If the Employer has not received the notice of election at least five working days prior to the election date, please contact the Board Agent assigned to the case or the election clerk.

A party shall be estopped from objecting to the non-posting of notices if it is responsible for the non-posting. An employer shall be deemed to have received copies of the election notices unless it notifies the Regional Office at least five working days prior to 12:01 a.m. of the day of the election that it has not received the notices. *Club Demonstration Services*, 317 NLRB 349 (1995). Failure of the Employer to comply with these posting rules shall be grounds for setting aside the election whenever proper objections are filed.

VIII. LIST OF VOTERS

In order to insure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses which may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *NLRB. v. Wyman-Gordon Company*, 394 U.S. 759 (1969). Accordingly, it is directed that two copies of an election eligibility list, containing the full names and addresses of all the eligible voters, shall be filed by the Employer with the Regional Director for Region 32 within 7 days from the date of this Decision. *North Macon Health Care Facility*, 315 NLRB 359 (1994). The list must be of sufficiently large type to be clearly legible. I shall, in turn, make this list available to all parties to the election.

In order to be timely filed, such list must be received in the Regional Office, Ronald V. Dellums Federal Building & Courthouse, Suite 300 N, 1301 Clay Street, Oakland, California, on or before April 22, 2010. No extension of time to file this list shall be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the requirement here imposed. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed. The list may be submitted by facsimile transmission. Since the list is to be made available to all parties to the election, please furnish a total of two copies,

unless the list is to be submitted by facsimile, in which case no copies need be submitted. To speed preliminary checking and the voting process itself, the names should be alphabetized (overall by department, etc.) If you have questions, please contact the Regional Office.

IX. RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, D.C. 20570-0001. This request must be received by the Board in Washington by April 29, 2010. The request may be filed electronically through E-Gov on the Agency's website, www.nlrb.gov, but may not be filed by facsimile.

SIGNED at Oakland California, this 15th day of April 2010.

Alan B. Reichard, Regional Director
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